Supreme Court, U.S.
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No. 92-201

In The

Supreme Court of the United States

October Term, 1992

CONDADO PLAZA HOTEL & CASINO,

Petitioner,

v.

ASOCIACION DE EMPLEADOS DE CASINO DE PUERTO RICO CONCILIATION AND ARBITRATION BUREAU, AND ARBITRATOR JUAN T. RODRIGUEZ,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Puerto Rico

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1) Whether the Supreme Court of Puerto Rico erred in affirming a Superior Court Judgment upholding an arbitration award rendered according to prevailing labor law doctrines.

2) Whether a party to a labor arbitration proceeding can relitigate before this Court questions of fact already solved by the arbitrator at said proceeding and affirmed by State Courts.

STATEMENT OF PARTIES

The parties in the proceedings below were Asociación de Empleados de Casinos, a labor organization representing Condado Plaza Hotel & Casino employees; the Conciliation and Arbitration Bureau of the Department of Labor and Human Resources of the Commonwealth of Puerto Rico; and Juan T. Rodríguez, an arbitrator in said Bureau.

Petitioner was Condado Plaza Hotel & Casino, a corporation organized under the laws of the State of Delaware.

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TO THE HONORABLE COURT:

The respondent, Asociación de Empleados de Casino de Puerto Rico,[1] represented by its attorneys, respectfully prays that this court deny the Petition to Review the Judgment of the Supreme Court of Puerto Rico in this case.

[1] From hereon Respondent will be referred to as the Union.

OPINION BELOW

The Puerto Rico Supreme Court Judgment at bar affirms a judgment in Case No. KAC-91-0543 by Superior Court Judge, Angel F. Rossy, entered on September 25, 1991 affirming the award rendered in Case A-2270 on March 8, 1991 by arbitrator Juan T. Rodríguez. In the award, arbitrator Rodríguez decided that Petitioner's dismissal of the Union President, Mr. Víctor M. Villalba[2], was not justified. Petitioner was ordered to reinstate him immediately to his job and to pay all unearned wages, pursuant to the provisions of the collective bargaining agreement.

JURISDICTION

The jurisdiction of this court has been invoked pursuant to 28 U.S.C. sec. 1258. The Respondent agrees that there is jurisdiction in this Court to review the final judgment of the Supreme Court of Puerto Rico.

STATEMENT OF THE CASE

Villalba was an employee of the Condado Plaza Hotel & Casino and President of the Casino Employees Association. In that capacity he was summoned to testify before the Tourism Committee of the House of Representatives

[2] From hereon Mr. Victor M. Villalba will be referred as Villalba.

for the Commonwealth of Puerto Rico in hearings scheduled for November 27, 1985. The summons was issued in compliance with House of Representatives Resolution No. 102, of March 8, 1985, through which the Committee of Tourism, Commerce and Industry and Labor and Veterans Affairs was ordered to conduct a study regarding the Puerto Rican tourism industry. At the hearings Villalba appeared in his capacity as President of the Casino Employees Association, and read a statement regarding the matter for which he was summoned. The statement was transcribed and integrally incorporated in the Award which is the subject of review. Mr. Hugh Andrews (hereinafter "Andrews"), President of the Petitioner Hotel also appeared and testified. Three days after Villalba had testified, through letter dated November 30, 1985, signed by Andrews, in his capacity as President of the Condado Plaza Hotel, by Carl Kortum as General Manager of the Casino, and by Homero San Antonio in his capacity as Operations Manager of the Casino, Villalba was notified of his dismissal effective that same day. As grounds for the action taken it was indicated that the information given in his statement to the legislature was false, destructive, disloyal and contrary to the interests of the employees that he represented.

After an arbitration hearing lasting sixteen days and based on the evidence submitted by the parties, in particular, on the content of the statement read by Villalba, the arbitrator issued his Award deciding that the statement and representations by Villalba before the House of Representatives were not defamatory not did they constitute grounds for taking disciplinary action against him. As

consequence the arbitrator decided that Villalba's dismissal was unjust and ordered his reinstatement.

On April 8, 1991 Condado Plaza Hotel & Casino filed a Petition for Review in the Superior Court of Puerto Rico.[3] On September 25, 1991 Superior Judge Angel F. Rossy sustained the validity of the Award. On February 24, 1992 the Supreme Court of Puerto Rico denied a motion for reconsideration of its January 17, 1992 judgment which affirmed the judicial decision issued in Case No. KAC-91-0543 by Superior Court Judge Angel F. Rossy.

Respondent, Asociación de Empleados de Casino de Puerto Rico, objects all references and misstatements of facts drafted on Condado Plaza Hotel & Casino's "statement of the case" in which it appears to represent as facts of the case, that Villalba made libelous or defamatory accusations against Petitioner or against Andrews, President of William Hospitality Management Corporation. Villálba statements are reproduced in the award and they speak for themselves. (See, Appendix to the Petition p. 19-43).

We further object to references made in said "statement of the case" to issues brought forth regarding the Petitioner's request regarding the disqualification of the arbitrator. Those issues were the subject of the Superior Court Judgment entered in case CE-91-690. The Supreme

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[3] Prior to this, on two separate occasions, September 18, 1986 and October 24, 1986 the Petitioner moved the United States District Court for the District of Puerto Rico to stay proceedings before the arbitrator and in both instances the petitions were denied.

Court of Puerto Rico denied reconsideration on February 24, 1992 and no timely Petition was filed on that case before this Court. In view of this fact all references made to the issues brought forth in that case should be disregarded and not made part of the record of the case at bar.

REASONS WHY THE WRIT SHOULD BE DENIED

The Petition Presents no Important Questions of Law Which Warrant the Issuance of the Writ, but Rather Addresses Mere Factual Disputes Devoid of any Genuine Constitutional Dimension

Petitioners have attempted to frame the questions raised in its petition in constitutional terms, in order to provide the basis for the issuance of the writ of certiorari. The Petition, however, presents no constitutional issues but rather addresses various factual disputes arising within the context of a grievance arbitration process and subsequent judicial decisions affirming the arbitrator's award.

The argument in the Petition can be reduced to three claims:

a) a claim that the Award "fails to draw its essence from the collective bargaining agreement";

b) a claim that "false, defamatory statements were made" by an employee and as such are not constitutionally protected;

c) a claim that under the facts of this case Villalba could justifiably be discharged as a "disloyal employee".

The respondent will address each of the above claims separately.

A. The Issue of the Award and the Collective Bargaining Agreement

It is well settled in the federal judicial forum, ever since 1960 in the *Steelworkers Trilogy cases (United Steelworkers of America v. American Manufacturing Corp.*, 363 U.S. 504 (1960); *United Steelworkers of America v. Warrior and Gulf Navigation Co.*, 363 U.S. 574 (1960), and *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960)), that the refusal of the courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes through arbitration would be undermined if courts had the final say on the merits of the award. *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, supra.

When the parties in an employer-employee relationship have chosen collective bargaining in order to find solutions to the disputes that may arise between them, the courts should abstain from interfering in such relationship except by way of exception under certain special circumstances, it has been stated that the federal labor policy as expressed in the labor legislation approved by Congress is to encourage the use of the arbitration process in order to obtain prompt and final solutions to the labor disputes that might otherwise end in labor strikes. See *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, supra.

As expressed by this Court in *United Steelworkers of America v. American Mfg. Co.*, supra, at page 566:

> "Section 203(d) of the Labor Management Relations Act, 1947 61 Stat. 154, 29 U.S.C. Sec. 173(d), 29 U.S.C.A., Sec. 173(d) states: 'Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement . . . ' That policy can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play."

Furthermore, this Court in *Enterprise Wheel & Car Corp.*, supra, stated.

> " . . . the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." (supra, p. 599).

The Court, in very precise and strict terms adheres firmly to the view that as long as an arbitrator is "arguably" construing the contract and acting within the scope of his authority, even if the reviewing court is convinced he committed "serious error", that does not constitute sufficient grounds for reversal, *Paperworkers v. MISCO, Inc.* 484 US 29, 37 (1987). In its ruling the Court held:

> "Because the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, *it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept. Courts thus do not sit to hear*

claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts. To resolve disputes about the application of a collective bargaining agreement, an arbitrator must find facts and a court may not reject those findings simply because it disagrees with them. The same is true of the arbitrator's on the contract. The arbitrator may not ignore the plain language of the contract; *but the parties having authorized the arbitrator to give meaning to the language of the agreement, a court should not reject an award on the ground that the arbitrator misread the contract. Enterprise Wheel,* supra, at 699. *So, too, where it is contemplated that the arbitrator will determine remedies for contract violations that he finds, courts have no authority to disagree with his honest judgment in that respect.* If the courts were free to intervene on these grounds, the speedy resolution of grievances by private mechanisms would be greatly undermined. Furthermore, it must be remembered that grievance and arbitration procedures are part and parcel of the ongoing process of collective bargaining. It is through these processes that supplementary rules of the plant are established. As the court has said, the arbitrator's award settling a dispute with respect to the interpretation of application of a labor agreement must draw its essence from the contract and cannot simply reflect the arbitrator's own notions of industrial justice. *But as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." MISCO,* supra, at page 37.

In the instant case Petitioner seeks that this Court grant a petition for certiorari requesting the setting aside

of a Puerto Rico Supreme Court Judgment which affirmed a judgment issued by a Superior Court confirming an arbitration award. Petitioner, in a rather multi-pronged approach, tries to bring forward several reasons to propose why the award should be vacated.

Petitioner's contentions colored in constitutional dimensions, are bound for failure as this Court has very vigorously established the standard that the federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of an arbitration award. That is precisely the situation at hand. Petitioner presented its case *at sixteen (16)*[4] arbitration hearings, it didn't prevail before the arbitrator; sought Review to the Superior Court, it didn't prevail, finally it appealed to the Supreme Court of Puerto Rico were it again didn't prevail. Petitioner's position is to relitigate *all the issues* it lost in the three forums below.[5] In their decisions the courts below were upholding the well established principle that in labor arbitration, matters of contract interpretation and view of the facts are typically proper for the arbitrator not for a reviewing court. While the arbitrator's award must draw its essence from the collective bargaining agreement, it need not mirror a judge's notion of how the agreement's language might best be interpreted or might most fairly be applied to a given set of facts. So long as the arbitrator, acting withinthe scope of his delegated authority, is arguably

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[4] Seventeen additional hearings were held over the jurisdictional and disqualification issues.

[5] Not to mention its attempts to stay proceedings at the federal courts.

construing the contract based on evidence he granted credibility, his decision must stand. To put it succinctly, a court should uphold an award that depends on a arbitrator's interpretation of a collective bargaining if it can find, within the four corners of the agreement, any plausible basis for that interpretation. In the same manner it must uphold the arbitrator's interpretation of the facts presented before him if there is evidence on the record to uphold them.

Petitioner alleges in its brief that the award should have been vacated by the courts below since the determinations of facts were not substantiated by the totality of the record. Again Petitioner tries to collaterally appeal case CE-91-690 which was dismissed by this Court for lack of jurisdiction. In its Brief, it again argues that the arbitrator's and court's findings of fact on the issues of *arbitrability, disqualifications,* and constitutional rights are not supported by the ample, clear evidence on the record as a whole. (emphasis supplied). These issues were decided by the Superior and Supreme Court in case CE-91-690 and are final and binding to the parties. The alleged reliance on "non-facts" is contrary to the appreciation of the evidence by the arbitrator, the Superior Court Judge and the Judges of the Supreme Court.

Although it may be possible to quibble over various facts found by the arbitrator and judges (or implicit in their decisions), the standard of review is unrelenting: as a general proposition, an arbitrator's factual findings are not open to judicial challenge.

The discharged employee's expressions were very clear and were included, in its entirety, in the labor

award. The fact that those expressions were made at a Legislative hearing adds to the Union's position regarding its First Amendment Protection. The arbitrator, and all the judges in the lower courts were at the same position and all, specially the arbitrator, arrived at the same conclusion: no libel nor defamation were incurred by the discharged employee. Said findings are founded in reason, and in fact; they are not based on conjectures or belief on *a proven* non-fact. Petitioner's argument is a thinly disguised attempt to retry the arbitration case before this court.

Petitioner further contends that the omission in the award to references to the "proven damages" that the employee statements allegedly caused to his employer led the court to error. Obviously, after sixteen (16) arbitration hearings, the arbitrator conclusion regarding "proven" facts or facts not proven by the parties is grounded on the record. Petitioner allegations, assertions or wishes that those were "proven damages" obviously were not shared by the arbitrator. The arbitrator conclusions of fact are based on the evidence on the record as a whole, not merely on Petitioner's "evidence". One of the crucial tasks of an arbitrator is to not only receive evidence from the parties but also to weigh said evidence, including its credibility. Petitioner's position, succinctly stated, would mean that once a party presents its version regarding a controversy, that version must be believed by the arbitrator in patent disregard of its duty to weigh the validity of the proffered evidence.

At the arbitration hearings held on the merits, the arbitrator handled numerous evidenciary conflicts. The courts, as previously stated, have established the norm of

non-interference that should prevail regarding issues of fact. The arbitrator heard all the testimonies and received all the evidence. He therefore is in the best position to judge credibility. This is exactly the kind of decision that is entitled to be given great weight by courts of appeals. That the arbitrator made a credibility finding, or reached a conclusion different from that which Petitioner asserts he should have reached, is not ground for interfering with the award. This doctrine was properly upheld by the lower courts when they sustained the validity of the award in the instant case. The Petitioner fails to substantiate any erosion of the principles enunciated by this Court which doctrine governs this case. It has failed also to demonstrate that these doctrines were not properly applied by the lower courts.

B. The Allegations Concerning Alleged Defamation

As a second error – Petitioner alleges that the employee's expression were false and defamatory statements and therefore not constitutionally protected. Petitioner insists that the employee "committed perjury, a felony "; that his statements "were not true"; and that allegedly, since they caused damages to petitioner's economic position, they were defamatory.

In a well reasoned award the arbitrator did not consider Villalba's appearance before the legislature to be libelous or defamatory:

> "In our opinion, such statements from the complainant respond to the purpose for which he was summoned before the Committee, that is, to

> propitiate a re-evaluation of the Tourist Industry ' . . . with the aim of seeing which legislative measures or administrative measures could be adopted' . . . "We understand, then, that the same represent ideas that fall within the area of the permissible and desirable in a field where alternate possibilities of public policy are discussed. We cannot, therefore, classify such a point of view as defamatory or libelous. To so classify it would constitute an unnecessary impediment to the complainant's freedom of speech and to the lawmakers' right to become informed of alternatives of the development of an industry which is of fundamental importance in the creation of jobs. Regarding this we should mention that the Puerto Rico Political Code in Section 153, provides that a witness shall commit a misdemeanor by failing to appear or refusing to respond after being summoned to give testimony of produce documents or both, in any matter under investigation before the Legislative Assembly of before a joint committee or of either of the Houses." (See Appendix to Petition, at pages 37-38).

The Petitioner again seeks review of the evidence and the facts. The arbitrator gave total consideration to the record as a whole. This Court, since its land mark decision of *MISCO*, supra, embraced totally the finality doctrine and the lower courts have since followed the principle. But even under the plethora of pre-*MISCO* decisional law establishing the boundaries within which errors of facts were a basis to vacate, Petitioner's claim lacks merits. The arbitrator's decision was not "so palpably faulty that no judge or group of judges, could even conceivably have made such a ruling" (*Safeway Stores v.*

Bakery & Confectionery Workers Local III, 390 F.2d 79 (1968)), on the contrary, not only a Superior Judge gave validity to the arbitrator reasoning and award but also the Supreme Court Judges of the Commonwealth of Puerto Rico.

As a disappointed party, Petitioner seeks continued review by this Court, as it did before the other forums. Not satisfied with the results of the lengthy hearings held before the arbitrator, and the subsequent judicial rulings which sustained the arbitrator's decision, Petitioner asks this Court for a fourth review of the evidence and the facts, contrary to the rules long established on such matter: "We do not grant a certiorari to review evidence and discuss specific facts". *United States v. Johnson*, 268 U.S. 220, 227 (1925).

C. The "disloyal employee" Claim

Again relating to the evidence, the Petitioner contends that Villalba's actions and statements were disloyal to his employer and that under prevalent labor law the employer could discharge him. The arbitrator made an extensive analysis of those statements and he concluded that the employee's actions were not disloyal. Specifically the arbitrator's words were as follows:

> "The fact that the complainant made the recommendation on public policy, or in general terms, prevents us from categorizing them as disloyal in the restrictive and usual sense of that concept (public denunciations about an employer's service or product, coarse or of doubtful quality, etc.). On the other hand, to think of the recommendations with respect to the governmental

> policy applicable to the industry in general as disloyal would constitute a limitation, not only as to the complainant's freedom of speech as a union leader and a citizen, but to the legislature's right to be informed from one whom it deems capable of doing so. With regard to the latter, read Honorable Representative Rivera Morales's statements during the questioning session once the complainant had ended his talk." (See, Appendix to the Petition at p. 39-40).

The fact that Villalba disagreed with his employer as to what the government policy should be in the Tourist industry and the Casinos, cannot be characterized as disloyal nor defamatory. Disagreement is not a synonym of disloyalty, specially when freedom of speech rights and an employee's work are at stake.

Finally, Petitioner's argument that the award is contrary to Puerto Rico's Dismissal Law, Act 80 of May 30, 1976, as amended, 29 P.R.L.A. sec. 185 et seq., is without merit. In the first place Petitioner's argument is based on the premise that Villalba incurred in libel or defamation of his employees or its business.

Act 80 of May 30, 1976, as amended, states that in cases ruled by the so called "employment at will" labor doctrine, an isolated act, if serious enough, is sufficient cause for a discharge. In the instant case, the parties deferred to the arbitrator the determination of the validity of the employer action of discharging Villalba. The arbitrator exonerated the employee of committing a serious fault, thus Petitioner's argument falls under its own weight. To give validity to Act 80 dispositions the employer must first establish, by evidence believed by

the arbitrator, the commission of the serious fault. As has been shown this is not the case. Furthermore, Law 80 as amended, seems to set the type of local "minimum employment standard" found enforceable in *Metropolitan Life Ins. Co. v. Massachusetts,* 471 U.S. 724, 757 (1985):

> "When a state law established a minimum employment standard not inconsistent with the general legislative goals of the NLRA, it conflicts with none of the purposes of the act." *Metropolitan,* supra, at 757.

A collective bargaining agreement may enhance, but not diminish, minimum standards prescribed by state labor law. In this case the parties deferred to the arbitrator the determination of the validity of Villalba's discharge. By doing so the arbitrator's decision, as long as he abides by the collective bargaining agreement and the submission agreement, is final and binding to the parties.

As noted above, there is simply no constitutional dimensions to the claims Petitioner raises regarding the nullity of the arbitration Award. The Petitioner had more than one day in court, and it lost. It's cursory allegations of constitutional issues cannot hide the fact that it merely wants to obtain a fourth review of a particular contextual situation, on a matter of significance only to the parties involved.

CONCLUSION

For all the above, the Petition for writ of certiorari should be denied. The Petition presents no issue which merits the granting of the writ.

Respectfully submitted.

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